

Verne, B. Michael

ITEM 4(c)

To: [REDACTED]
Subject: RE: Item 4(c) Question

Only documents that are relevant to that specific "acquisition," i.e., the facility in the particular geographic region.

-----Original Message-----

From: [REDACTED]
Sent: Tuesday, December 05, 2006 8:52 PM
To: Verne, B. Michael
Subject: Item 4(c) Question

B. Michael
12/5/06

Dear Mike:

I am seeking any guidance the PNO may have in connection with analyzing the proper approach to Item 4(c) documents in connection with the formation of a joint venture (which will be in the form of an unincorporated entity).

At present, X and Y have agreed to form the joint venture and have agreed to the scope of the business of the joint venture ("Scope"). There are no binding capital contribution obligations at the present time. The general intention of X and Y is that X will contribute cash and credit to the Joint Venture and that Y will contribute nonexempt assets to the Joint Venture. No reportable transactions have occurred to date, but the venturers expect to seek HSR clearance as a condition to closing any binding Contribution Agreement that exceeds the applicable thresholds.

The question relates to compliance with Item 4(c) at such time as there is a reportable transaction. For example, assume that X will contribute cash and Y will contribute a facility in a certain geographic region. Would the Item 4(c) obligation clearly relate only to that specific transaction, i.e., studies, surveys, etc., relating to markets and pricing, etc., that are relevant to that specific "acquisition," i.e., the facility in the particular geographic region? Or would the Item 4(c) obligation arguably be read to extend back to work done and documents prepared earlier (perhaps even years earlier) that relate to the "Scope," i.e., the general plan to enter markets much broader than the one implicated in the present, reportable transaction?

Our question arises, in part, due to the "continuum" theory set forth in Interpretation 171, to the effect that a post-formation Contribution Agreement may be viewed as a part of the continuum of organizing the entity (in this case, one that may contemplate a much broader joint venture).

We inquire because certain joint ventures take years of planning and executives (and in certain cases, perhaps their files) might come and go over time. If the obligation is broad and relates back to periods well before the instant, reportable transaction, perhaps the client should adopt procedures to track potential Item 4(c) documents. We have not found any definitive guidance on this in the green book or on the web site and would welcome any guidance you may have. Please let me know if you need more information. Many thanks and regards.

[REDACTED]